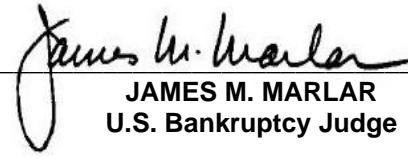


1 Dated: October 02, 2008
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JAMES M. MARLAR
U.S. Bankruptcy Judge6
7 **IN THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ARIZONA**
910 In re:
11 ROBERT E. MATYSIAK, JR. and
12 ANGELA D. MATYSIAK,
13
14 Debtors.

} Chapter 13
} No. 4:08-bk-04648-JMM
} **MEMORANDUM DECISION RE:**
} **DEBTORS' OBJECTION TO PROOF OF**
} **CLAIM NO. 4**

15
16 The Debtors have filed an Objection to Proof of Claim No. 4 which attempts to avoid
17 the secured creditor's lien held by ~~GE Money Bank / Green Tree~~ on their real property residence
18 (Dkt. #18). No adversary proceeding has been filed by which the amount, validity or priority of this
19 junior lien is challenged. (FED. R. BANKR. P. 7001.)20 Nor have the Debtors set forth a valid legal reason to challenge the lien, as the statute
21 mandates that ~~mortgage liens on real property residences~~ may not be modified. (11 U.S.C.
22 § 1322(b)(2))23 In addition, the Debtors listed the lien, in their schedules, as undisputed. Moreover,
24 the Debtors have not presented any proof to support their assertion that the real property has no
25 value below that of the first lienholder's interest (11 U.S.C. § 506.), which would render ~~GE Money~~
26 ~~Bank / Green Tree's~~ lien wholly unsecured. *See Nobleman v. American Sav. Bank*, 113 S.Ct. 2106
27 (1993).

1 If the Debtors seek to strip off a lien, it must do so in the context of an adversary
2 proceeding, with adequate safeguards for service, and a meaningful opportunity for hearing. In the
3 instant case, service was not effected upon an individual or statutory agent, but only upon the
4 corporate entity at a drop location. This is not adequate. *See FED. R. CIV. P. 4(m).*

5 GE Money Bank/Green Tree filed a secured claim for \$66,510.53. (Claim No. 4.)
6 It supported it with the promissory note and deed of trust signed by the Debtors, as well as an
7 accounting.

8 No plan has yet been confirmed. The Debtors have shown no legal basis, supported
9 by facts, by which this court can deprive a secured creditor of its lawful lien. Should the Debtors
10 seek to do so in the future, they must file an adversary proceeding upon this creditor, with a showing
11 of proper service upon its statutory agent or an officer or managing partner.

12 The current pleadings do not meet the tests for procedural due process. An order
13 denying the Debtors' Objection to Proof of Claim No. 4 will therefore be entered.

14 Should the Debtors wish to try again, they must employ appropriate procedural
15 safeguards. *See FED. R. CIV. P. 4.*

16
17 DATED AND SIGNED ABOVE.

18
19 COPIES to be sent by the Bankruptcy Notification
20 Center ("BNC") to the following:

21 Charles M. Sabo
22 Attorney for Debtors
23
24 GE Money/Green Tree
25 P.O. Box 0049
26 Palatine IL 60055-0049
27
28 Dianne C. Kerns
29 Trustee
30
31 Office of the U.S. Trustee